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May 29, 1996

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Dear Ladies and Gentlemen:

Open Records Decision No. 645

Re: Duties and Responsibilities of local law enforcement agencies and school districts to release public information under the sex offender registration statute, V.T.C.S. article 6252-13c.1, and related questions (ORQ-8)

As attorneys acting on behalf of your respective governmental entities, each of you has requested our decision as to whether and to what extent you are required to release to the public certain information pertaining to sex offenders who are required to register with the local law enforcement authority in the municipality or county in which the sex offender intends to reside. Your questions require the interpretation and application of recent amendments to the sex offender registration statute, V.T.C.S. art. 6252-13c.1, in conjunction with the Texas Open Records Act, chapter 552 of the Government Code.[1]

Under the sex offender registration statute, each sex offender with a "reportable conviction or adjudication"[2] is required by law to register with the appropriate "local law enforcement authority": the chief of police of the municipality in which the person intends to reside for more than seven days or, if the person does not intend to reside in a municipality, the sheriff of the county in which the person intends to reside for more than seven days. V.T.C.S. art. 6252-13c.1, §§ 1(2) (defining "local law enforcement authority"), 2(a) (registration). The sex offender must register with the appropriate local law enforcement authority within seven days after the offender's arrival in the municipality or county. *Id.* § 2(a). The sex offender registers by either completing or verifying the contents of a Texas Department of Public Safety ("DPS") form, which the local law enforcement authority receives from the Texas Department of Criminal Justice, the Texas Youth Commission, the courts, and county jails upon the release of the sex offender. *Id.* §§ 2(d)(2)[3] (courts), 3(a)(4), (b) (penal institutions). Article 6252-13c.1 requires that the following information be included in the registration form:

> (1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, shoe size, and home address;
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> (2) a photograph of the person and a complete set of the person's fingerprints;
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> (3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received; and

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[1]Although most of the open records requests appear to have been triggered by the publication of a public notification required where the victim was under 17 years of age, *see* V.T.C.S. art. 6252-13c.1, §§ 3(e), 4(f), we note that this open records decision applies equally to information pertaining to all individuals required to register under the sex offender registration statute.

[2]*Id.* § 1(5) (defining "reportable conviction or adjudication").

[3]As added by Act of May 29, 1995, 74th Leg., R.S., ch. 676, § 1, 1995 Tex. Gen. Laws 3649.

> (4) any other information required by the department.

Id. § 2(b).

After the sex offender verifies the registration information in the hands of the local law enforcement authority, the authority must then forward a copy of the registration form to DPS, where the information is entered into a computerized central database. *Id.* §§ 2(c), 5(a). Section 5(b) of the sex offender registration statute provides:

> The information contained in the database is public information, with the exception of the person's photograph or any information:
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> (1) regarding the person's social security number, driver's license number, numeric street address, or telephone number; or
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> (2) that would identify the victim of the offense for which the person is subject to registration.

Consequently, DPS must release the information in its database upon receipt of a written request except for those items specifically made confidential under sections 5(b)(1) and 5(b)(2). Further, local law enforcement authorities are required to release the public information contained in the DPS database upon written request. *Id.* § 5(c).

Although section 5(b) specifically makes public most of the information found in the DPS database, section 5(b)(2) prohibits the release of any information "that would identify the victim." Several of you express the concern that any information revealing the identity of the registrant could, by implication, reveal the identity of the victim. For example, the Bexar County Criminal District Attorney's Office received an open records request for, among other things, the offender's full name and the "case number that led to [the] conviction." Bexar County Criminal District Attorney Steven Hilbig makes the following argument for not disclosing these types of information:

> My concern regarding the release of any information that tends to identify the offender is that such information has *the potential* to cause disclosure of the victim's identity. Records of conviction are public and can be obtained through local court records. The name of the victim is included in the indictment or information. Thus, anyone who has the name of the offender *will be able to discover* the identity of the victim. . . .
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> . . . The legislature clearly saw fit to exclude certain identifiers such as the offender's social security number, driver's license, numeric street address and telephone number. Because each of these identifiers would appear *to lead to* the identity of the victim, it is our

> position that the information requested, likewise, should be excluded . . . . [Emphasis added; footnote omitted.]

In response to these and similar comments, we note that section 5(b)(2) prohibits the release of any information "that *would* identify the victim." The legislature, in enacting its amendments to article 6252-13c.1, could have specifically made the registrant's identity confidential by including the registrant's name among the types of information to be kept from the public in section 5(b)(1). Similarly, the legislature could have broadened the scope of confidentiality in section 5(b)(2) to information that "could" or "might tend to" identify the victim. By using the term "would," this office believes that the legislature intended to make confidential only information that on its face would directly reveal the victim's identity.

Admittedly, an enterprising individual *could* use the registrant's name or other information to obtain the court records and, thus, possibly determine the identity of the victim. However, information cannot be deemed confidential under the Open Records Act merely because its release would *indirectly* lead to other information specifically made confidential by statute. *See, e.g.*, Open Records Decision No. 366 (1983) at 3-4. Furthermore, this office has long held that, as a general rule, statutory confidentiality requires express language making particular information confidential. *See, e.g.*, Open Records Decision No. 478 (1987) at 2. We therefore conclude that the information contained in the DPS database may not be withheld from the public merely because the information could be used to obtain other information that might reveal the identity of the crime victim.

Ms. Gail Fenter, attorney for the City of Midland, contends that the additional information contained in the DPS registration form, but not specifically listed as being required for registration in section 2(b) of the sex offender registration statute, should not be required to be made public. These categories of information include, among other things, the following: a description of the registrant's vehicle and license plate number, the registrant's occupation, name of employer, and name and address of the registrant's nearest relative. Section 2(b)(4) requires that the registration form include "any other information *required* by [DPS]." (Emphasis added.) There is nothing in the DPS registration forms submitted to this office that suggests that these additional categories of information within the form may be completed at the option of the court, penal institution, or local law enforcement authority. We therefore conclude that DPS requires that these items be completed as part of the registration form, and, as such, must be entered into the DPS database along with the other information contained in the forms. Consequently, the local law enforcement authorities must withhold these additional items as confidential only to the extent that the information reflects one of the categories of information specifically made confidential under section 5(b). For example, if the registrant's home address is the same as that of the registrant's nearest relative, the relative's address must be withheld.

Accordingly, the only categories of information on the registration form that the local law enforcement authorities must withhold are the registrant's social security number, driver's license number, numeric street address and telephone number, and any information that on its face would directly reveal the identity of the victim. All remaining information in the registration form is open and must be released to the public upon written request.

The City of Richland Hills and the Hurst-Euless-Bedford, Grapevine-Colleyville, Azle, and Burleson Independent School Districts have received requests for sex offender information that encompass information about juvenile sex offenders. The question of the extent to which information pertaining to juvenile offenders must be released to the public requires this office to resolve the conflict between two disclosural laws: the sex offender registration statute and section 51.14(d) of the Family Code.[4]

Mr. Paul Wieneskie, attorney for the City of Richland Hills contends that

> the policy underlying the Family Code has always required that records on juvenile offenders be kept confidential, and disclosed only to other juvenile justice agencies. . . .
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> . . . .
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> Prior to January 1, 1996, § 51.14 of the Texas Family Code provided, in substance, that records of law enforcement agencies concerning juvenile offenders were confidential, with certain exceptions not relevant to this issue. On January 1, 1996, the new Juvenile Justice Code became law, and § 51.14 of the Family Code was repealed. The confidentiality provision formerly contained in § 51.14 of the Family Code are now found in §§ 58.005, 58.007 and 58.106 of Title III of the Family Code . . . .

Mr. Wieneskie correctly outlines the conflict between section 5 of article 6252-13c.1, which makes no distinction between the public disclosure of information regarding adult and juvenile sex offenders, and former section 51.14(d) of the Family Code, which makes

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[4]Both the City of Richland Hills and the Hurst-Euless-Bedford Independent School District also suggest that there exists a conflict between article 6252-13c.1 and the newly enacted chapter 58 of the Family Code. However, this office has concluded that section 58.007 of the Family Code does not make confidential juvenile law enforcement records relating to conduct that occurs on or after January 1, 1996. *See* Open Records Decision No. 644 (1996). On the other hand, law enforcement records relating to delinquent conduct occurring before January 1, 1996, are governed by former section 51.14(d) of the Family Code, which greatly restricts access to juvenile law enforcement records and which was continued in effect for that purpose. Consequently, this decision addresses the release of juvenile sex offender information pertaining to conduct occuring between September 1, 1995, and December 31, 1995.

confidential, with certain exceptions, all records pertaining to juvenile offenders, including those records held by law enforcement agencies.

Statutes that deal with the same general subject matter are considered as being *in pari materia*, even though they contain no reference to one another. In order to arrive at the proper statutory construction, all parts of the acts *in pari materia* will be construed together, as though they were parts of the same law. Any conflict between their provisions will be harmonized if possible, and effect will be given to all provisions of each act, if they can be made to stand together. *State v. Dyer*, 200 S.W.2d 813 (Tex. 1947); *Trimmer v. Carlton*, 296 S.W.2d 1070 (Tex. 1927); *Conley v. Daughters of the Republic of Texas*, 156 S.W. 197 (Tex. 1913).

In this instance, this office does not believe that the sex offender registration statute and former section 51.14(d) of the Family Code can be harmonized: article 6252-13c.1 unquestionably requires the release of certain sex offender information while former section 51.14(d) of the Family Code makes information pertaining to juvenile offenders confidential. When faced with two statutes that are in irreconcilable conflict, we look to the rule of statutory construction that the statute that was enacted at the later date prevails. Gov't Code § 311.025(a). Senate Bill 267, the legislation enacting the amendments to article 6252-13c.1 with which we are concerned, was enacted by the legislature on May 19, 1995. Section 51.14(d) of the Family Code was last amended in 1993. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852. The sex offender registration statute is the later enacted statute and thus prevails over the confidentiality provisions found in former section 51.14(d) of the Family Code.

Moreover, the conclusion that the sex offender registration statute should prevail over the Family Code provisions making juvenile law enforcement records confidential is consistent with other provisions of the sex offender registration statute. The statute clearly contemplates the registration of juvenile sex offenders with local law enforcement authorities. *See* V.T.C.S. art. 6252-13c.1, §§ 1(3) (including within definition of "penal institution" a "confinement facility operated by or under contract with the Texas Youth Commission"), 1(5)(G) (including within definition of "reportable conviction or adjudication" an "adjudication of delinquent conduct"), 2(b) (issuance of DPS registration form to Texas Youth Commission and Juvenile Probation Commission). However, despite the fact that the sex offender registration statute requires the registration of juvenile sex offenders, section 5 of the statute does not differentiate between the required release of information pertaining to juvenile and adult sex offenders.[5] We also

[5]Although sections 3(e) and 4(f) of article 6252-13c.1 include within the exception to the required published notifications information pertaining to juvenile sex offenders, those sections also make exception for those sex offenders who are placed on deferred adjudication and for offenses under section 25.02 of the Penal Code. Because there is no language in article 6252-13c.1 that suggests that information pertaining to these other two categories of sex offender are to be maintained as confidential, the mere fact that juvenile sex offenders have been distinguished in this manner does not suffice to make juvenile offender information confidential.

note that the legislative history on this statute is silent as to this issue. Consequently, there is no evidence to suggest that our conclusion that juvenile information must also be released to the public is inconsistent with the intent of the legislature.[6]

Finally, we address the concerns raised by Mr. Thomas Myers, attorney for the Hurst-Euless-Bedford Independent School District, regarding the disclosure of sex offender information held by a school district superintendent. In this regard we note that if the sex offender's victim was under 17 years of age at the time of the criminal conduct, the sex offender registration statute requires that the local law enforcement authority publish a notice in the local newspaper[7] and notify the superintendent of the school district in which the sex offender intends to reside. V.T.C.S. art. 6252-13c.1, § 3(e). The notice published in the local newspaper is required to include the following information *only*: the offender's age and gender, a brief description of the offense, and the municipality, street name, and zip code where the offender intends to reside. *Id.* § 3(f). By contrast, the local law enforcement authority's notice to the school district superintendent must also include "any information the authority determines is necessary to protect the public," *except* the offender's social security number, driver's license number, telephone number, or "any information that would identify the victim."[8] *Id.* § 3(g); *see also Id.* § 4(f), (g), (h) (registrant's change of address).

As a preliminary matter, we first address Mr. Myers' contention that because the sex offender registration statute does not specifically provide for the school district's subsequent release of information pertaining to the registrant, any such subsequent release is prohibited under the statute. He correctly points out that nowhere in the statute are there any provisions outlining how the school district is authorized to use the registrant information or to whom and to what extent the information may be released.

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[6]We also find no inconsistency between our conclusion here and the mandates of the recently enacted Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (to be codified at 42 U.S.C. § 14071(d)). Section 14071 also requires both the registration of juvenile sex offenders and the "release [of] relevant information that is necessary to protect the public concerning a specific person required to register . . . ."

[7]Such public notification is prohibited, however, where "the basis on which the person is subject to registration is . . . an adjudication of delinquent conduct or a deferred adjudication" or where the conviction is an offense under section 25.02 of the Penal Code (incest). V.T.C.S. art. 6252-13c.1, § 3(e).

[8]For purposes of establishing some preliminary guidelines as to what types of information other than the victim's name or address may not be released, we note that some of the school district notifications submitted to this office for review contain notations that reveal the victim's gender, age, and the fact that the victim is a relative or family member of the registrant. We believe that these facts, taken together, constitute "information that would identify the victim." On the other hand, notations in other notifications that reveal that the victim was "a 16 year old friend of [the registrant's] daughter," "a 12 year old female he met at a party," or "a 14 year old female, who is a friend's daughter" are more general in nature and thus would be less likely to identify the victim. This office urges caution, however, to both the local law enforcement authority providing this type of information to the school district, as well as to the school district itself, when contemplating the release of information about the victim.

On the other hand, we note that the sex offender registration statute places no specific restriction on the release of the information obtained by the school district but, rather, only on the types of information it may receive from the local law enforcement authority.

Although the sex offender registration statute contains no special provisions as to what information the school district may or may not release to the public, section 552.002(a)(1) of the Government Code specifically provides that all information "collected, assembled, or maintained" by a governmental body pursuant to a law or ordinance is public information unless the information comes within one of the Open Records Act's specific exceptions to disclosure listed in subchapter C of Government Code chapter 552. Because much of the information to be submitted to the school districts pursuant to section 3(g) of article 6252-13c.1 is specifically made either public or confidential by section 5(b) of the sex offender registration statute, the school districts must release and withhold registrant information they receive from the local law enforcement authority in accordance with section 5(b) as discussed above.

We note, however, that because school districts are also authorized to receive, with certain exceptions, "any information the authority determines is necessary to protect the public," *id.* § 3(g), the release of some of the information held by the school district may not be governed by section 5(b). For example, it is conceivable that the local law enforcement authority may decide that the school district should receive a copy of the registrant's court, probation, or parole records, police investigatory records, criminal history information, or other types of information. To the extent that these records contain information the release of which is governed by section 5(b) or other statutory law, the district must withhold or release that information accordingly.[9] *See* Attorney General Opinion H-917 (1976) (confidential information may be transferred from one entity to another without infringing on confidentiality of information so long as each entity is authorized to possess it); Open Records Decision Nos. 623 (1994), 525 (1989), 451 (1986) (Open Records Act's exceptions may not be used to withhold information deemed public under separate statute). The release of the remaining information, however, will be governed by the Open Records Act and the school districts may withhold this additional information from the public only upon a demonstration to this office that one or more of the act's exceptions to required public disclosure apply. Such a determination by this office must be made on a case-by-case basis.

Mr. Myers next expresses concern that none of the notifications his client has received contain the date of the registrant's conviction or adjudication. Prior to the past legislative session, section 5 of the sex offender registration statute made release of sex offender registration information to anyone other than a law enforcement officer a Class

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[9]We agree with Mr. Myers' contention that to the extent that a school district receives juvenile sex offender information about one of the district's students, the information must be treated as a confidential "education record" under the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 20 U.S.C. § 1232g. *See generally* Open Records Decision No. 634 (1995).

B misdemeanor. *See* Act of May 26, 1991, 72d Leg., R.S., ch. 572, § 1, 1995 Tex. Gen. Laws 2029, 2030, *amended by* Act of May 19, 1995, 74th Leg., R.S., ch. 258, § 6, 1995 Tex. Gen. Laws 2197, 2201-02. By amending this statute, the Seventy-fourth Legislature provided that the change in the law applies only to a reportable conviction or adjudication that occurs on or after September 1, 1995, or to an order of deferred adjudication for a person required to register that is entered on or after September 1, 1995. *See* Act of May 19, 1995, 74th Leg., R.S., ch. 258, § 16, 1995 Tex. Gen. Laws 2197, 2205. A reportable conviction or adjudication that occurs before September 1, 1995, or an order of deferred adjudication that is entered before September 1, 1995, is governed by the law in effect when the conviction or adjudication occurred or the order was entered. *Id.*

Because the school district notifications do not contain the date of the "reportable conviction or adjudication," the district is concerned that it may unknowingly commit a Class B misdemeanor by releasing pre-September 1, 1995, registration information. Although the possibility of such a release exists, we do not believe that concern is warranted. Just as the recent amendments to the sex offender registration statute entitle the *public* to information pertaining only to a "reportable conviction or adjudication" occurring on or after September 1, 1995, the amendments also authorize *school districts* to receive information pertaining only to post-September 1, 1995, registrations. Assuming that the local law enforcement agency will comply with the restrictions placed upon it by the statute, the school district need not be concerned as to the date of the conviction or adjudication.[10]

Mr. Myers also expresses concern over the lack of the conviction date information in the notifications because certain information pertaining to sex offenders paroled from prison was confidential prior to the amendments to the sex offender registration statute. Again, any concern in this regard is misplaced. Prior to amendment, section 18 of article 42.18 of the Code of Criminal Procedure made confidential all information pertaining to "individuals who may be on mandatory supervision or parole and under the supervision of the pardons and paroles division." *See* Act of May 28, 1993, 73d Leg., R.S., ch. 988, § 11.05, 1993 Tex. Gen. Laws 4277, 4317, *amended by* Act of May 19, 1995, 74th Leg., R.S., ch. 258, § 13, 1995 Tex. Gen. Laws 2197, 2205. The Seventy-fourth Legislature amended section 18 of article 42.18 by adding subsection (b), which provides that the confidentiality provided by section 18 "does not apply to information regarding a sex offender if the information is authorized for release under Article 6252-13c.1."[11] However, unlike the amendments to article 6252-13c.1 discussed above, Senate Bill 267, which amended both statutes, did not limit the applicability of the amendment to section

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[10]We also note that section 5A(b) of the sex offender registration statute provides that "[a]n individual, agency, entity, or authority is not liable under Chapter 101, Civil Practice and Remedies Code, or any other law for damages arising from" the release of public information by DPS, a penal institution, or a local law enforcement authority.

[11] Code Crim. Proc. art. 42.18, § 18(b) *as added by* Act of May 19, 1995, 74th Leg., R.S., ch. 258, § 13, 1995 Tex. Gen. Laws 2197, 2205.

18 of article 42.18 to information pertaining to individuals becoming "parolees" after a particular date. Consequently, there is no sex offender registration information made confidential under section 18, article 42.18 of the Code of Criminal Procedure.

Mr. Myers also suggests that certain information that may be contained in the school district notices may be confidential under certain provisions of the Transportation Code. Section 502.008 of the Transportation Code restricts the release of vehicle registration information held by the Department of Transportation, while section 521.052(a) outlines the procedure by which an individual can restrict the release of the individual's home address by DPS. Both of these statutes, however, by their very terms, pertain only to those respective state agencies. Neither statute applies to information held by the school district.

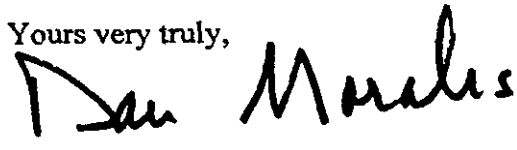
SUMMARY

Under article 6252-13c.1, V.T.C.S., all information contained in either an adult's or juvenile's sex offender registration form and subsequently entered into the Department of Public Safety data base is public information and must be released upon written request except for the registrant's photograph, social security number, driver's license number, numeric street address and telephone number, and any information that on its face would directly reveal the identity of the victim.

Local law enforcement authorities are required under article 6252-13c.1 to provide school district officials with "any information the authority determines is necessary to protect the public" regarding adult sex offenders. Upon receiving a written request for such information, the school district must release or withhold the requested information it receives in accordance with section 5 of article 6252-13c.1 or other law, including the Open Records Act.

Neither school district officials nor the general public are authorized to receive from local law enforcement authorities sex offender registration information pertaining to individuals whose reportable convictions or adjudication occurred prior to September 1, 1995.

Yours very truly,



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